IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.1056 OF 1993

Shri Manchand Sakru Bhandari
since deceased by his heirs and legal
representatives.

1A.Smt. Birbati W/o Manchand Sakru
Bhandari, Occupation-Household.

1B.Mr. Shripal Manchand Bhandari
Occupation-service.

1C. Mr. Haripal Manchand Bhandari
Occupatiuon-Service

1D. Omkar Manchand Bhandari
Occupation-service.

1E. Mr. Hansbir Manchand Bhandari
Occupation Student.

1F. Mr. Vinod Manchand Bhandari
Occupation-Student.

All residing at 763 Wanowarigaon
Pune 411040. ..Petitioners
(Ori.Defts.)

Vs.

Mr. Dhanraj Tarachand Pardeshi
Occupation-Business,
residing at 10 Ghorpuri Bazar,
Pune. ..Respondent
Orig.Plaintiff.

Mrs. Anita A. Agarwal for the petitioners.
None for the respondent.

CORAM : ANOOP V.MOHTA J.

DATE : 11TH JULY, 2005.

ORAL JUDGMENT

. The petitioners-tenants have invoked Article 227 of the Constitution of India and thereby challenged the concurrent finding given by the Courts below, whereby, the respondents-landlords' suit for the recovery of possession has been decreed on the ground of default, for non payment of arrears of rent, as contemplated under section 12(3)(a) of the Bombay Rents Hotel And Lodging House Rates (Control) Act, 1947 (for short Bombay Rent Act).

2. The petitioners are in possession of a room admeasuring 8'X 10' feet owned by the respondent-landlord. The premises has been in occupation of the petitioners, since long. The tenancy was monthly, at the rate of Rs. 15/- per month. The present landlord became the owner of the suit property from 21st December, 1981. The necessary intimation of the said purchase was given to the petitioner by the respondent, on he same day of the registration of the sale deed of the property in question. The petitioners thereafter in spite of intimation failed to make monthly payment of rent. Therefore, the demand notice dated 20/11/1983 was sent and called upon the petitioner tenant to make the arrears of rent with effect from

1/1/1982. The petitioners received notice on 23/11/1983, Exh. 19 and 20. The petitioners did not reply or resisted the same. The petitioners, admittedly did not deposit the rent within one month from the receipt of the said notice. The petitioners-tenants admittedly, have not filed any application for fixation of standard rent within one month, raising any dispute about the standard rent. The demand of arrears was made at the rate of Rs. 15/- per month, including education cess and water tax from the petitioners i.e. the total amount Rs. 345/-. The respondent filed the suit on 10/4/1985. By the written statement, the petitioners resisted the said demand contending, therein that one Mr. Kale, who owned the land never issued the receipts to the payment made regularly by the petitioners. The petitioners also contended that they had constructed the hut on the site in question, in the year 1966. The respondent-landlord after purchase of the said property never issued rent receipts, which petitioners were paying regularly, at the rate of Rs. 20/- per month. In the present case, the petitioners have deposited the rent of Rs. 1080/- in the Court Exh. 48, admittedly, not immediately, within one month, from the demand notice, dated 20/11/1983. The parties led evidence.

The learned Small Causes Court, Pune, after considering the material and the evidence on the record, by judgment dated 12th April, 1990 held that the petitioners-tenants had committed default in payment of arrears of rent. Theretofore, passed the decree in question for possession. The Appellate Court in the appeal, filed by the petitioner have confirmed the same. Therefore, the present writ petition against the said concurrent finding by the petitioners-tenants.

3. Heard, the learned Counsel, Mrs. Anita Agarwal for the petitioners. She has relied on **1987 Mah. R.C.J. 36 (Virji Raisey V. Anand Issardas Motiani and others), AIR 1976 Bombay 295 (Bai Mohinibai Dharamasey V. Khimji Tokarshi Jivraj and another), 1982 Mh.L.J. 347 (Shamrao Abaji Jadhav V. Chaturbai Sidheshwar Javeri)** and contended that in the present case the non payment of rent by the tenant cannot be the ground of eviction and it has also got to be established by the landlord that non-payment of the rent on the part of the tenant was deliberate, willful or intentional. Therefore, mere failure to pay rent does not amount to negligence. The application filed for fixation of standard rent, cannot be overlooked. Therefore, as

contended that the finding, as arrived at by the Courts below need interference. No other points argued. None appeared for the respondents on 28/6/2005 and on 4/7/2005.

4. Undisputed facts on the record are that the respondent has purchased the suit property on 21/12/1981. The intimation was accordingly given to the petitioners. The demand notice dated 20/11/1983, on accounts of arrears from 1/1/1982 to 31/12/1983 was issued and received by the petitioners. There was no reply or response to the said notice by the petitioners. Admittedly, based on the said demand notice, the rent was not deposited. No application of any kind raising dispute about the rent, filed in any court, within one month. The suit was filed by the respondent, pursuance to the said notice on 10/4/1985. The defence was raised of no default in depositing the rent, as the respodnent-landlord never issued the receipt of the rent deposited at the rate of Rs. 20/- per month. The earlier landlord Mr. Kale had also never issued receipt of the rent paid from time to time by the petitioners. On the record both the Courts held that there is no sufficient material and or evidence to prove that the

petitioners paid rent regularly at the rate of Rs. 20/- per month. The concurrent findings given by both the Courts, based on the evidence led by the parties, remained undisturbed, even in the cross-examination. The respondent-landlord in this background, substantiated his case of arrears of rent, as claimed. The concurrent findings given by the Courts below, and after going through the material, as well as, the findings on the record, including the reasoning given by the Courts below, appears to be reasonable and plausible. There is no perversity, as such, which can be borne out or pointed out from the record. In such circumstances, I am of the view, that the concurrent finding of holding the petitioners defaulter, as contemplated under Bombay Rent Act need no interference.

5. The deposit of amount of Rs. 1080/- by the petitioner-tenant, Exh.48 in the Court after expiry of the period of one month, no way mitigate the requirement of section 12(3)(a) of the Bombay Rent Act. Admittedly, as per the requirement of Section 12(3)(a), if there is no dispute regarding the standard rent or permitted increases, raised, and the tenant is in arrears of rent for a period of six months or more, and tenant in spite

of the demand neglected to make the payment, within the period of one month, after receipt of notice under section 12(2), there is nothing, which saves the tenant from resisting the suit filed by the landlord on the ground of defaulter, as contemplated under Bombay Rent Act. In the present case, as noted above, all the three ingredients were present, and as admittedly, no rents were deposited or resisted within the stipulated period, the petitioner tenant, therefore, not entitled for any protection, on the foundation that the neglect on the part of the tenant was not deliberate, not willful or not intentional. In the facts and circumstances of the present case, therefore, the authorities, as cited are not helpful to the Counsel appearing for the petitioners, in support of his contention, as raised above. The facts of those cases are distinguishable. The respondent-landlord has established on the basis of undisputed position on the record that the petitioners-tenants had neglected to pay the rent and were in arrears of rent for more than six months. The petitioners tenants failed to establish that they were ready and willing to pay the rent, specially when in spite of the demand notice, though, admittedly not deposited the rent or raised any dispute about the non

issuance of the rent receipts.

6. In view of the fact and circumstances of the present case all these judgments referred above, in no way helpful to the respondent-landlord, in the facts and circumstance of the case.

7. In view of this, it is difficult to accept the contention raised by the Counsel appearing for the petitioner that, as they have deposited the rent to the extent of Rs.1080/- that itself should be taken, as willingness and readiness to pay the rent and therefore. the Land-lord-respondent was not entitled to recover the possession of the suit premises. The fact of Shamrao (Supra) itself were distinct and distinguishable. Both the Courts in the present case, came to the conclusion that the rent deposited was not within the period, as contemplated under the Bombay Rent Act, as demanded by the notice and therefore, it cannot be said that the petitioners had paid the rent, as demanded. The said judgment also no way supports the petitioners.

8. The full bench of the Bombay High Court, reported in **A.I.R. 1971 Bombay 396 (Dattu Subhan V.**

Gajanan Vithoba) in Bai Mohinibai (Supra) relied by the Counsel for the petitioners, after considering the section 12(3)(a) of the Bombay Rent Act, further endorsed that, if both the Courts comes to the finding that all the conditions enumerated in Section are fulfilled the decree of possession should follow. In the present case, in absence of any contrary evidence, and as admittedly no rents were deposited in spite of the receipt of the demand notice in question and both the Courts come to the conclusion, based on the material on the record and held that the petitioners- tenants are defaulter, as no arrears were deposited in time. Therefore, the conclusion, as arrived by both the Courts below need no interference under Article 227 of the Constitution of India.

9. In view of the above reasoning, I am not inclined to interfere with the finding given by the Courts below, as the view taken is reasonable and plausible.

10. Therefore, the petition is dismissed. Rule discharged. Interim stay, as granted is vacated.

[ANOOP V. MOHTA, J.]